

*This is a model Pre-Trial stipulation. Please prepare and file all stipulations in this format.*  
*Please note: Any text in italics is for instructional purposes only and should NOT be included in the Pre-Trial Stipulation.*

[Attorney Information – Name, Bar No.  
Address, Phone, Fax, Email Address]

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

In re DAVE DILL,  
Debtor

Bk. No. 2:10-bk-00000 VZ  
Chapter

-----  
JOAN JONES,  
Plaintiff(s),  
v.  
DAVID DILL,  
Defendant(s).

Adv. No. 2:10-ap--00000-VZ

**PRE-TRIAL STIPULATION FOR  
CLAIMS FOR RELIEF**

DATE:  
TIME:  
PLACE: Courtroom 1368  
Roybal Federal Building  
255 E. Temple St.  
Los Angeles, CA 90012

**PRE-TRIAL STIPULATION**

\_\_\_\_\_, plaintiff in this adversary proceeding ("Plaintiff") and \_\_\_\_\_,  
defendant in this adversary proceeding ("Defendant") SUBMIT THE FOLLOWING PRE-  
TRIAL STIPULATION through their respective counsels pursuant to Local Bankruptcy Rule  
7016-1(b)(2).

1 **I. UNDERLYING ISSUES OF FACT COMMON TO ALL CLAIMS FOR RELIEF**

2 A. Defendant filed a petition for relief under Chapter 7 on December 31, 20[xx] (the  
3 “petition date”).

4 Not Contested: *See I.J below for an example of the format for an issue*  
5 *that is contested.*

6 B. Plaintiff commenced this adversary proceeding by filing a complaint on January 31,  
7 20[xx].

8 Not Contested

9 C. Prior to the petition date, on October 1, 20[xx], Plaintiff and Defendant entered into  
10 an oral agreement pursuant to which Plaintiff loaned Defendant \$10,000 for Defendant to  
11 purchase a car.

12 Not Contested

13 D. Defendant was to make monthly payments of \$500 beginning on November 1, 20[xx]  
14 until the loan was repaid.

15 Not Contested

16 E. The loan was to bear simple interest of 5%.

17 Not Contested

18 F. In connection with the loan, D signed a security agreement which provided that the car  
19 purchased by Defendant with the loaned funds was to be collateral for the loan.

20 Not Contested

21 G. Prior to making the loan, Plaintiff asked Defendant what his annual income was.

22 Not Contested

23 H. Defendant told Plaintiff his annual income was \$34,000.

24 Not Contested

25 I. Defendant’s tax return for 20[xx] reflects Defendant’s income for that year was  
26 \$20,000.

27 Not Contested

28 J. Defendant failed to make any payments on the loan.

1 Contested

2 Plaintiff: After receiving the \$10,000 loan, Defendant failed to make any payments on  
3 the loan and to date has not made any payments to reduce the balance of the loan which  
4 currently remains \$10,000. The payments made by Defendant to Plaintiff in 11/1/20[xx] and  
5 12/1/20[xx] were for Defendant's portion of the rent.

6 Evidence:

7 Testimony of Joan Jones

8 Exhibit 1: Canceled Check dated 10/1/20[xx]

9 Defendant: A month after receiving the \$10,000 loan, Defendant began making monthly  
10 payments of \$500 for two months and repaid \$1,000 to Plaintiff. Plaintiff then told Defendant to  
11 "forget" the amount he owed Plaintiff, that it was a gift.

12 Evidence:

13 Testimony of Dave Dill

14 Exhibit A: Canceled Check dated 11/ 1/20[xx]; Exhibit B: Canceled Check dated  
15 12/1/20[xx]

16 K. Plaintiff demanded Defendant either make the payments due on the loan or turn over  
17 the car.

18 Not Contested

19 L. Defendant to date has not made any payments on the loan and has not turned over the  
20 car to Plaintiff.

21 Not Contested

22 M. Defendant sold the car to a third party.

23 Not Contested

24 N. Plaintiff and Defendant have been friends for approximately ten years, and lovers for  
25 the past five.

26 Not Contested

1 **II. CLAIMS FOR RELIEF**

2 A. First Claim: The debt should not be discharged because the debt was for money  
3 which was obtained by actual fraud. (523(a)(2)(A))

4 1. ELEMENTS OF THE CLAIM

5 a. Defendant represented that his annual income was \$34,000 (the “representation”).

6 Not contested

7 b. Defendant knew the representation was false when made.

8 Contested

9 Plaintiff: The Defendant lied about his income to convince Plaintiff to  
10 make the loan. Defendant’s tax return for 20[xx] reflects that he made only  
11 \$20,000 that year.

12 Evidence:

13 Testimony of Joan Jones

14 Exhibit 1: Canceled check dated 10/1/20[xx]

15 Defendant: Defendant is self employed and he based his statement of  
16 annual income on what he made the year prior to 20[xx]. Defendant’s business  
17 suffered in 20[xx] because Defendant developed a serious illness and there were  
18 many days that Defendant could not work which caused him to lose clients.

19 Evidence:

20 Testimony of Dave Dill

21 Testimony of Dr. Joe

22 Exhibit C: Tax Return for year prior to 20[xx]

23 c. Defendant made the representation with the intent to deceive.

24 Contested

25 Plaintiff: Defendant knew that his annual income for 20[xx] was not going  
26 to be anywhere near \$34,000 when he made the representation to Plaintiff.

27 Evidence:

28 Testimony of Dave Dill

Exhibit 2: 20[xx] Cash Flow Statement of Dave Dill Co.

Defendant: Defendant believed that his health would be better than it turned out to be in 20[xx] and believed that his income would be approximately \$34,000 for that year.

Evidence:

Testimony of Dave Dill

d. Plaintiff justifiably relied on the representation.

Not Contested

e. Plaintiff was injured.

Not Contested

f. The Defendant's conduct was the proximate cause of the injury.

Not Contested

B. Second Claim: The debt should not be discharged because the debt was obtained by fraud or defalcation while the Defendant was acting in a fiduciary capacity. (523(a)(4))

1. ELEMENTS OF THE CLAIM

a. Defendant owed a fiduciary duty to Plaintiff.

Contested

Plaintiff: The Defendant and Plaintiff have been friends and lovers for many years. Their relationship is based upon trust. It was reasonable for Plaintiff to believe that the loan would be repaid.

Evidence:

Testimony of Joan Jones

Testimony of Annie Applegate

Defendant: Recently, the relationship between Defendant and Plaintiff has been very strained. At the time Plaintiff filed his bankruptcy petition, he was in the process of moving out of Plaintiff's house, and ending their relationship. On numerous occasions prior to the petition date, Plaintiff accused Defendant of seeing other women. Plaintiff would call work to see if Defendant had left for the

1 day and be outraged if Defendant didn't come straight home. Defendant  
2 frequently stated that she "didn't trust Defendant as far as she could throw him."

3 Evidence:

4 Testimony of Dave Dill

5 Testimony of Sally Smith

6 b. Defendant breached the fiduciary duty.

7 Contested

8 Plaintiff: Plaintiff believed that based upon the loving and trusting  
9 relationship between Plaintiff and Defendant, the Defendant would repay the debt.

10 Evidence:

11 Testimony of Joan Jones

12 Testimony of Annie Applegate

13 Defendant: Defendant didn't breach any fiduciary duty as Plaintiff knew  
14 that the relationship was ending. Plaintiff knew that Defendant was moving into  
15 his own apartment, and that he was interested in pursuing other relationships.  
16 Plaintiff loaned Defendant the money hoping that Defendant would feel obligated  
17 to her and thus would not end their relationship.

18 Evidence:

19 Testimony of Dave Dill

20 c. Plaintiff was injured.

21 Not Contested

22 d. Defendant's breach was the proximate cause of Plaintiff's injury.

23 Not Contested

24 C. Third Claim: The debt should not be discharged because the debt was obtained by  
25 willfully and maliciously injuring another. (523(a)(6))

26 1. ELEMENTS OF THE CLAIM

27 a. By selling the car that was security for the loan, Defendant converted it.

28 Not Contested

1 b. Defendant knew or reasonably should have known that his actions would  
2 cause injury to Plaintiff.

3 Contested

4 Plaintiff: The Defendant knows that Plaintiff's salary is very low.  
5 He also knows that the \$10,000 was over one-half of Plaintiff's life  
6 savings.

7 Evidence:

8 Testimony of Joan Jones

9 Defendant: Defendant had absolutely no reason to believe that  
10 Plaintiff would be injured if he didn't repay the loan. He thought she was  
11 extremely wealthy. She was constantly buying expensive clothing,  
12 jewelry, and furniture. Her most recent purchase was a \$100,000 Porsche.

13 Evidence:

14 Testimony of Dave Dill

15 Testimony of Sally Smith

16 c. Defendant's act caused Plaintiff's injury.

17 Not Contested

18 d. Defendant's action was the proximate cause of Plaintiff's injury.

19 Not Contested  
20

### 21 **III. DAMAGES**

22 A. By reason of Defendant's actions, Plaintiff has been damaged in the sum of \$10,000  
23 plus 5% simple interest from and including October 1, 20[xx].

24 Contested

25 Plaintiff: Defendant has paid no portion of the \$10,000 loaned to him by  
26 Plaintiff on October 1, 20[xx] which was to bear simple interest from that date  
27 until the loan was paid in full.

28 Evidence

1                                   Testimony of Joan Jones

2                                   Exhibit 1: Canceled check dated 10/1/20[xx]

3                                   Defendant: Defendant made two months of payments and the Plaintiff told  
4 Defendant to consider the balance owed a gift and as such Defendant owes  
5 nothing to Plaintiff. Even if Defendant owed any amount to Plaintiff, it would be  
6 no more than \$9,000 as Defendant paid \$1,000 on toward the \$10,000 loan.

7                                   Evidence:

8                                   Testimony of Dave Dill

9                                   Exhibit A: Canceled Check dated 11/ 1/20[xx]; Exhibit B:

10                                  Canceled Check dated 12/1/20[xx]

11  
12 **IV. AFFIRMATIVE DEFENSES**

13                                  A. FIRST AFFIRMATIVE DEFENSE: The debt has been paid and/or forgiven.

14                                  Contested

15                                  Defendant: Defendant made two months of payments on 11/1/20[xx] and  
16 12/1/20[xx] then Plaintiff told Defendant to consider the balance owed a birthday  
17 gift (Defendant's birthday is New Year's Day). Accordingly, Defendant owes  
18 nothing to Plaintiff. Even if Defendant owed any amount to Plaintiff (which  
19 Defendant denies), it would be no more than \$9,000 as Defendant paid \$1,000 on  
20 toward the \$10,000 loan before Plaintiff forgave the balance as a gift.

21                                  Evidence:

22                                  Testimony of Dave Dill

23                                  Exhibit A: Canceled Check dated 11/ 1/20[xx]; Exhibit B:

24                                  Canceled Check dated 12/1/20[xx]

25                                  Plaintiff: The payments made by Defendant to Plaintiff in 11/1/20[xx]  
26 and 12/1/20[xx] were for Defendant's portion of the rent. Defendant has paid no  
27 portion of the \$10,000 loaned to him by Plaintiff on October 1, 20[xx] which was  
28 to bear simple interest from that date until the loan was paid in full.



1 Evidence:

2 Testimony of Joan Jones

3 Exhibit 1: Canceled check dated 10/1/20[xx]

4 B. SECOND AFFIRMATIVE DEFENSE: Any amount claimed as owing by Plaintiff is  
5 subject to set-off.

6 1. Elements of the Affirmative Defense:

7 a. Plaintiff owes Defendant \$6,972.89 by reason of charges made by  
8 Plaintiff on Defendant's credit card.

9 Contested

10 Defendant: On September 23, 20[xx], Plaintiff charged \$6,972.89 on  
11 Defendant's credit card to purchase a plasma television. Defendant did not  
12 authorize Plaintiff to make the charges which Defendant considers an extravagant  
13 frivolity.

14 Evidence:

15 Testimony of Dave Dill

16 Exhibit D: Declaration of Grandmother

17 Plaintiff: Defendant allowed Plaintiff to charge the plasma television on  
18 Defendant's credit card in satisfaction of amounts Defendant owed Plaintiff by  
19 reason of Defendant owing Plaintiff four months rent and having broken  
20 Plaintiff's big screen television which the plasma television was purchased to  
21 replace.

22 Evidence:

23 Testimony of Joan Jones

24 Testimony of Annie Applegate

25 b. Defendant has made demand for the payment of the \$6,972.89, but  
26 Plaintiff has failed and refused and continues to fail and refuse to pay that sum.

27 Not Contested

28 C. THIRD AFFIRMATIVE DEFENSE: Plaintiff waived the right to collect on the debt.

1 1. Elements of the Affirmative Defense:

2 a. Plaintiff intentionally relinquished the right to be paid by forgiving the balance  
3 on the loan as a gift to Defendant.

4 Contested

5 Defendant: Defendant made two months of payments on 11/1/20[xx] and  
6 12/1/20[xx] when Plaintiff told Defendant to consider the balance owed (\$9,000)  
7 a birthday gift; therefore, Defendant owes nothing to Plaintiff.

8 Evidence:

9 Testimony of Dave Dill

10 Plaintiff: Since Defendant was having financial difficulties, Plaintiff  
11 agreed that as a gift, Defendant did not have to make any further payments on the  
12 loan for as long as Defendant was living with Plaintiff. Defendant has since  
13 moved out of the residence that Plaintiff and Defendant had shared, so the balance  
14 owing on the loan is due and payable.

15 Evidence:

16 Testimony of Joan Jones

17 b. Plaintiff knew she had the right to be paid on the loan.

18 Not Contested

19 c. Plaintiff was aware of the facts and circumstances involving the debt and that  
20 Defendant had an obligation to pay the debt.

21 Not Contested  
22

23 **V. EXHIBITS TO BE OFFERED BY EACH PARTY AND OBJECTIONS TO EXHIBITS**

24 A. PLAINTIFF'S EXHIBITS: Plaintiff's exhibits are attached to this order as Appendix

25 1. Defendant stipulates to the admission and authenticity of the exhibits listed in Appendix 1.

26 B. DEFENDANT'S EXHIBITS: Defendant's exhibits are listed in and attached to  
27 Appendix 2 of this order. Defendant stipulates to the admission and authenticity of the exhibits  
28 listed in Appendix 2 [and contests the admissibility of the exhibits listed in the concurrently filed

1 "Motion to Exclude Evidence."] *Include the language in brackets ONLY if there are objections*  
2 *to the admission of exhibits.*

3 If there is a dispute as to the authenticity or admissibility of either party's exhibits, the  
4 objecting party shall file and serve concurrently with this pre-trial stipulation any motion to  
5 exclude evidence with a supporting memorandum of points and authorities. Any response to the  
6 motion shall be filed and served two court days prior to the pre-trial conference. All objections  
7 to the admission of exhibits shall be resolved at the pre-trial conference. The failure to so object  
8 to the admission of exhibits listed on Appendices 1 and 2 may be deemed a waiver of any  
9 objection.

## 11 **VI. WITNESSES TO BE OFFERED BY EACH PARTY**

### 12 **A. Plaintiff:**

13 A list of the only witnesses Plaintiff shall call to testify at trial, a summary of their  
14 intended testimony, and an estimate of the length of direct and cross-examination is attached to  
15 this order as Appendix 3.

### 16 **B. Defendant:**

17 A list of the only witnesses Plaintiff shall call to testify at trial, a summary of their  
18 intended testimony, and an estimate of the length of direct and cross-examination is attached to  
19 this order as Appendix 4.

## 21 **VII. REBUTTAL TESTIMONY**

22 Plaintiff, who has the burden of establishing each element of its claim(s) for relief, will  
23 be the first to introduce evidence to prove the facts necessary to enable Plaintiff to recover.  
24 When Plaintiff rests, Defendant may then present evidence to contravene any of Plaintiff's claims  
25 or in support of any affirmative defenses which the Defendant has included in this pre-trial  
26 stipulation. After the close of Defendant's case, Plaintiff may present rebuttal testimony only to  
27 counter evidence previously submitted by Defendant on issues not raised in Plaintiff's original  
28 presentation of its case.

**STIPULATION**

The foregoing admissions have been made by the parties, and the parties have specified the foregoing issues of fact and law remaining to be litigated. Therefore, this stipulation shall supersede the pleadings and govern the course of trial in this adversary proceeding, unless modified to prevent manifest injustice.

IT IS SO STIPULATED.

**Signature of Plaintiff or Attorney for Plaintiff:**

*Date*

*Type Name*

*Signature*

IT IS SO STIPULATED.

**Signature of Defendant or Attorney for Defendant:**

*Date*

*Type Name*

*Signature*

APPENDIX 1

Plaintiff OFFERS:

Exhibit #1: Canceled Check dated 10/1/20[xx]

Exhibit 2: 20[xx] Cash Flow Statement of Dave Dill Co.

Defendant stipulates to Plaintiff's Exhibits 1 and 2

APPENDIX 2

DEFENDANT OFFERS:

Exhibit A: Canceled Check dated 11/ 1/20[xx]

Exhibit B: Canceled Check dated 12/1/20[xx]

Exhibit C: Tax Return for year prior to 20[xx]

Exhibit D: Grandmother's declaration dated 9/30/20[xx]

Plaintiff stipulates to Defendant's Exhibits A-C, but objects to Defendant's

Exhibit D. (*See Model for motion to exclude evidence.*)

APPENDIX 3

PLAINTIFF'S WITNESS

1. Joan Jones - Will testify that:

A. The Plaintiff has a sterling reputation for truthfulness in the community.

B. The Plaintiff and Defendant have a loving, trusting relationship.

C. The Plaintiff is not a wealthy woman.

Estimated Direct: 30 minutes

Estimated Cross-examination: 45 minutes

2. Annie Applegate - Will testify that:

A. She introduced Plaintiff and Defendant.

B. The Plaintiff and the Defendant appeared to have a good relationship.

B. She saw the Defendant break Plaintiff's television.

Estimated Direct: 15 minutes

Estimated Cross-examination: 30 minutes

APPENDIX 4

DEFENDANT'S WITNESSES

1. Dave Dill - Will testify:

A. That the Defendant has a good reputation in the community.

B. The Defendant is not a person who would mislead someone, and if he did, it would not have been intentional.

C. Plaintiff and Defendant fought on many occasions during the months prior to the end of their relationship.

D. Plaintiff and Defendant did not have a loving, trusting relationship.

Estimated Direct: 30 minutes

Estimated Cross-examination: 45 minutes

2. Sally Smith - Will testify:

A. She is a business associate of the Defendant's.

B. Plaintiff has frequently called Defendant at work. If the Defendant was not available, the Plaintiff would scream obscenities into the phone, and slam down the receiver.

C. She helped the Defendant locate an apartment.

D. She has frequently seen the Plaintiff wear expensive designer clothing and jewelry.

Estimated Direct: 45 minutes

Estimated Cross-examination: 1 hour

3. Dr. Joe: will testify:

A. In 20[xx] Defendant developed a serious illness which was severe enough to prevent him from being able to work for many days.

Estimated Direct: 30 minutes

Estimated Cross-examination: 1 hour



1 MOTION TO EXCLUDE EVIDENCE (*to be filed as a separate document*)  
2 AND RESPONSE  
3  
4

5 A. Plaintiff moves to exclude Defendant's Exhibit D as inadmissible for any purpose based  
6 upon the following:

7 1. Lack of Personal Knowledge—declarant has no psychological training in  
8 sociopathic personality disorder. (FRE 602)

9 2. It is opinion testimony by a lay witness requiring specialized knowledge—see  
10 above. (FRE 701-703)

11 3. Character evidence not admissible to prove conduct—that plaintiff is “vexatious  
12 and always troublesome.” (FRE 404)

13 4. It is hearsay. (FRE 801-802, 804)

14 B. Defendant's response to the above motion is:

15 1. Declarant has personal knowledge of plaintiff’s prior behavior and  
16 characterization via lay diagnosis is merely hyperbole. (FRE 602)

17 2. Scientific knowledge of DSM not necessary to form opinion regarding plaintiff  
18 and events leading to this case. (FRE 701-702)

19 3. Character evidence is offered as proof of plaintiff’s plan to entrap debtor rather  
20 than action in conformity therewith. (FRE 404(b))

21 4. Exception to hearsay available, declarant is deceased and declaration was  
22 taken under oath. (FRE 804(b)(1-2))  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

A true and correct copy of the foregoing document described as **PRE-TRIAL STIPULATION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Order(s) and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On Fill in Date Document is Filed, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) stated below:

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):

On Fill in Date Document is Filed, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on Fill in Date Document is Filed, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date

Type Name

Signature